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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,011	08/23/2001	Brian C. Ford	1168	9866

23518 7590 01/06/2004

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EXAMINER

KIM, EUGENE LEE

ART UNIT PAPER NUMBER

3721

DATE MAILED: 01/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/938,011

Applicant(s)

FORD, BRIAN C.

Examiner

Eugene L Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7 and 11 is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-10, 12-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____.

DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. Claims 1-4, 8-10, 12-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleeberger et al in view of Cumming. Kleeberger et al show a folding apparatus including a tube 24, a ram 22 that is moveable through tube 24, clam shell holding means 130 for holding and orienting the cover 126 for compressing the airbag 10 and housing 23 into the cover. The airbag is attached into the cover via a retaining ring 16 which reads on being riveted together or snapped together. Kleeberger shows the cover support member 32 that is proximate the first end of tube 24 as shown in figures 1c, 1d. Since there are two members 32 which are both moveable, this reads on the two cover support members. The barrier as claimed is shown in figure 1c wherein no contaminants are going to enter the inner surfaces of the tube means 24. Kleeberger shows the ram means moving in a lot means 12 but it is not in the tube means as claimed. Little patentable weight is given to the location of parts, such as, the location of the slot/channel means unless there is some criticality or unexpected result from the location. See in re Japikse, 86 USPQ 70 (CCPA 1950). Kleeberger does not show the curved tube and the pivoting ram as claimed. Cumming shows an apparatus that folds a workpiece into a compact folded configuration (col 2 lines 1+). Cumming shows the compression by ram means 36 that engage a curved arcuate wall as disclosed in col 6 lines 28+. The curved tube is upwardly and downwardly as shown in figure 20. Cumming discloses the folding or curling by an inward movement of the ram which creates optimum folding or curling (col 3 lines 52+). Since the ram is moving

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about a curved path, the examiner infers that the ram is moving in a radial manner. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Kleeberger et al with ram moving means as taught by Cumming to provide for optimal folding. Regarding the ram being pivotable, the examiner takes official notice that it is well known in the art to pivot elements for adjustability reasons.

2. Claims 5-7, 11 are allowed.

3. Applicant's arguments filed 12/10/2003 have been fully considered but they are not persuasive.

In response to applicant's argument regarding primary reference Kleeberger et al not showing the angular movement, the examiner notes that the secondary reference is being used to teach this concept since the ram is moving about a curved path.

In response to applicant's argument that the references can not be combined, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the secondary reference is being used to show a folding mechanism that folds a product into a compact configuration. The examiner also notes that expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability. See *ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969).

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In response to applicants argument regarding the pivoting limitation in claim 10, the examiner notes that the manner of mounting is a matter of design choice and that pivotally mounted elements are pivotable for adjustable reasons. The examiner further notes that pivoting elements are well known in the art to move particular elements.

In response to applicants argument regarding Cumming, the end face 48 engages an arcuate wall as shown in figures 19-21 and Cumming discloses that the ram compresses the product and engages the curved arcuate wall (col 6 lines 28+). The ram is controlling the movement of the product and must move in a radial manner to move the product as shown in figures 19-21.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene L Kim whose telephone number is 703 308-1886. The examiner can normally be reached on Tuesday-Friday 8 a.m. to 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.


EUGENE KIM
PRIMARY EXAMINER